

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Division of Library Services
(Amendment)

725 KAR 2:015. Public library facilities construction.

RELATES TO: KRS Chapter 13B, 171.027, 171.125, 173.040, 173.340, 173.480, 173.725, 198B.032 [~~198B.020~~], 198B.050, 227.300, 322.010(3), 323.010(1), (2), 323.020, Chapters 341, 342, 344, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 171.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.027 establishes The Public Library Facilities Construction Fund to assist local public libraries and other governing bodies in debt service payments relating to library construction or renovation projects. KRS 171.027 requires the Department for Libraries and Archives to promulgate administrative regulations to establish: (1) the application process; (2) the criteria for project selection; (3) the minimum level of local participation required; and (4) the process to be followed in the construction of facilities. This administrative regulation: (1) defines terms; (2) states general requirements for eligibility; (3) establishes application procedures for the applicant and the department; (4) establishes the construction process; and (5) provides for the payment of funds.

Section 1. Definitions. (1) "Application packet" means the packet of materials KDLA sends to each applicant library, containing:

- (a) A copy of the MOA currently being used;
- (b) A copy of this administrative regulation;
- (c) The criteria used to determine minimum matching requirements; and
- (d) Other relevant material needed for completion of an application for assistance.

(2) "Architect" is defined by KRS 323.010(2).

(3) "Available local revenue" means, as determined by the public library and approved by KDLA, the annual local funds available to pay down debt, not expected to decrease the level of normal and customary programs and services offered by the public library.

(4) "Award of assistance" means the annual grant payment awarded, for a period of not more than twenty (20) years, to a local public library to pay down debt incurred to construct or renovate a local public library facility.

(5) "Construction grant coordinator" means a [~~specialized~~] consultant designated [~~employed~~] by KDLA for the purpose of coordinating and consulting with Kentucky public libraries on construction grant issues.

(6) "Engineer" means "professional engineer" as defined by KRS 322.010(3).

(7) "KDLA" means the Kentucky Department for Libraries and Archives.

(8) "Local board" means:

(a) The local public library board of trustees established under KRS 173.040, 173.340, 173.480, or 173.725; or

(b) The official local governing body responsible for the operations of a local public library.

(9) "MOA" or "memorandum of agreement" means the written, long-term agreement between KDLA and a library awarding a PLFC Fund Grant to pay down debt incurred to finance a library facilities construction or renovation project, including each term and condition agreed to and stipulated by each party on the memorandum of agreement.

(10) "PLFC fund grant" means the annual grant awarded by KDLA, over a period of not more than twenty (20) years, to a local public library or governing body to assist in the payment of debt

incurred to construct or renovate local public library facilities.

(11) "Public library" is defined by KRS 171.125(2).

(12) "Punch list" means an inventory of work that remains to be completed and signed by the owner, the architect, and the contractor, to show that they agree the items on the list represent the work that remains to be done.

(13) "Responsible bidder" means a person, business, or organization that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(14) "State librarian" means the official described at KRS 171.130.

(15) "Written building program" means a textual description, often in bullet-point form, of the proposed facility and the spaces within the facility. It will delineate square footages, building systems, building materials & finishes, space adjacencies, utility & data requirements, furniture needs, collection spaces, etc.

Section 2. Stipulations and Conditions. (1) A public library building shall be constructed in compliance with the following:

(a) Uniform State Building Code, KRS 198B.050, as administered by the Kentucky Office of Housing, Buildings and Construction, KRS 198B.032 [~~198B.020~~];

(b) Standards of Safety related to fire prevention and protection, KRS 227.300;

(c) The Americans With Disabilities Act of 1990, 42 U.S.C. 12101;

(d) Workers' Compensation and Unemployment Insurance, KRS Chapters 341 and 342; and [~~e~~]

~~State Prevailing Wage Law, KRS 337.505 through 337.550; and]~~

~~e~~ [(f)] The Civil Rights Act, KRS Chapter 344.

(2) The local board of a public library applying for assistance from the PLFC fund shall comply with the following KDLA requirements:

(a) A building or renovation shall be planned, and construction shall be supervised by an architect or engineer whose credentials have been confirmed by KDLA.

(b) A contract for an architectural or construction service shall be in a standard form used by the American Institute of Architects[;]. Information about American Institute of Architects forms and where they may be obtained is available on the Institute's Web site[, ~~www.aia.org,~~] and on the Web site of the Kentucky Society of the American Institute of Architects[, ~~www.aia-ky.org~~]. An architect shall maintain professional liability insurance, including errors and omission insurance, in accordance with the limits set forth in the construction grant contract.

(c) Each plan and site selected for construction shall be approved by KDLA.

(d) The site and facility shall be owned by the local board. KDLA shall approve an alternative facility ownership or use arrangement if it is determined by KDLA to be in the best interest of the state, the local board, and the population served by that library. An applicant shall request KDLA approval for a proposed site prior to purchasing the site. A letter indicating approval or disapproval shall be sent to the local board by KDLA. Property not approved shall be ineligible for construction funds. A building owned by a local county or city government shall be approved if an authoritative letter is obtained establishing the local board's right of possession and use of the building for at least twenty (20) years.

(e) Purchase of an existing building for conversion to library use shall qualify for a PLFC fund grant if:

1. A structural engineer or architect certifies that the building is structurally sound and suitable for conversion;

2. The existing building is of open construction, supportive of a functionally flexible library; and

3. The service and economic considerations for conversion outweigh the service and economic considerations for construction of a new building.

- (f) A library building constructed using KDLA funds shall:
 - 1. Remain open to the public; and
 - 2. Maintain appropriately-qualified library personnel.
- (g) An application shall include:
 - 1. A written building program; and
 - 2. A current long-range plan.
- (h) A project shall:
 - 1. Demonstrate a plan for future growth; and
 - 2.a. Meet KDLA minimum standards for a public library facility; or
 - b. Be included in a countywide master facility plan designed to meet KDLA minimum standards within a reasonable time, with reference to the Kentucky State Data Center's ten (10) year median population projection.
- (i) A local board shall provide free countywide library services, without discrimination, to the citizens of the county in which the public library facility is located.

Section 3. Application for Assistance. (1) Preceding each fiscal year [~~Each fall preceding a fiscal year~~] that funding is available through the PLFC fund, KDLA shall distribute an "Intent to Apply" notice to every public library in the Commonwealth. A library intending to apply for assistance for the following fiscal year shall submit to KDLA a Notification of Intent to Apply.

- (2) KDLA shall send the following to each public library requesting fund assistance:
 - (a) Notification of the amount of funds available for PLFC grants; and
 - (b) An application packet.
- (3) An incomplete or late application shall not be considered unless the delay will not interfere with the awarding of the PLFC grants and there is a documented, unusual circumstance.
- (4) An unusual circumstance shall include a delay by a third party in certifying that the proposed site is not located [~~on a historic site, or~~] in a flood plain[,], or other documented circumstance beyond the control of the local board.

Section 4. Review of Applications for Assistance From the PLFC Fund. (1) KDLA shall establish a construction review committee to:

- (a) Review applications; and
- (b) Recommend to the state librarian the applicants considered eligible for a PLFC fund award.
- (2) The committee shall be composed of five (5) members, as follows:
 - (a) The state librarian shall appoint two (2) Division of Library Services [~~Field Services Division~~] consultants, to serve a term of one (1) year;
 - (b) The state librarian [~~Director of Field Services~~] shall appoint two (2) members each of whom has been involved, within the previous eight (8) years, in the completion of a building project valued at a minimum of \$500,000. Each member shall be a:
 - 1. Library director;
 - 2. Trustee; or
 - 3. Staff member;
 - (c) The construction grant coordinator shall serve:
 - 1. For the duration of his or her position; and
 - 2. As nonvoting chair of the committee; and
 - (d) The state librarian [~~Director of Field Services~~] shall appoint a replacement for a member unable to complete his or her term.
- (3) KDLA shall establish:
 - (a) Procedures for the construction review committee; and
 - (b) A ranking system for the PLFC fund award.

- (4) The criteria for award shall be:
- (a) Need:
 1. Assessment of existing facilities and service;
 2. Analysis of population data;
 3. Minimum square footage;
 4. Available local revenue; and
 - ~~5. General policies established for state assistance under the Public Library Services Improvement and Equalization Fund; and~~
 5. [6.] State library and library association standards.
 - (b) Planning: the extent to which the proposed facility addresses the applicant library's long-range plan for services.
 - (c) Partnerships: the extent to which the project strengthens the applicant library's relationship with other organizations in the service area.
 - (d) Project budget: the [The] extent to which the applicant library's project budget addresses anticipated expenditures, including at least five (5) percent for contingency.
 - (e) ~~Local contribution to the annual debt retirement shall be as follows: [match, if required: the extent to which the local board of a county with adequate income to qualify for matching assistance under the PLFC fund shows funds available to match the state award and to complete the project.]~~
 1. For applicant libraries with annual revenue from all sources of less than one hundred thousand dollars (\$100,000), a minimum yearly contribution to the annual debt retirement payments for this project shall be one thousand dollars (\$1,000);
 2. For applicant libraries with annual revenue from all sources of at least one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000), a minimum yearly contribution to the annual debt retirement payments for this project shall be ten thousand dollars (\$10,000); or
 3. For applicant libraries with annual revenue from all sources of five hundred thousand dollars (\$500,000) or greater, a minimum yearly contribution to the annual debt retirement payments for this project shall be thirty thousand dollars (\$30,000).
 - (f) Sustainability: the extent to which the local board can realistically afford to operate the proposed project.
 - (g) Completeness of application: the extent to which the applicant library has fairly and accurately provided required information on the application form.
 - (h) Timeliness of meeting required reporting deadlines: the extent to which the applicant library has filed the KDLA annual report and Department for Local Government reports on or before the designated deadlines in the past two (2) years.
 - (5) The state librarian shall take one (1) of the following actions, based on the recommendation of the construction review committee:
 - (a) Approve the application and offer an award of assistance;
 - (b) Approve the application at a reduced level or based upon funds availability;
 - (c) Approve the application with restrictive conditions; or
 - (d) Reject the application.
 - (6) KDLA shall notify each applicant, in writing, of the result of the state librarian's action approving or rejecting the application.

Section 5. Informal Appeals. (1) An applicant aggrieved by a decision of the state librarian may file an informal appeal with KDLA.

(2) Procedures.

(a) The local board shall notify KDLA of its intent to appeal:

1. Within twenty-one (21) days of the date of the letter of notification;
2. In writing;
3. Stating the basis for appeal; and
4. By registered mail to the state librarian, return receipt requested.

(b) Upon receipt of a notice of intent to appeal, the state librarian shall:

1. Convene a board of appeals composed of three (3) members. The board shall be composed of: ~~[, one (1) each having been nominated by:]~~

a. One (1) public library user nominated by the State Libraries, Archives, and Records Commission; ~~[The State Advisory Council on Libraries;]~~

b. One (1) public library director nominated by the Kentucky Public Library Association; and ~~[The Kentucky Library Association; and]~~

c. One (1) certified public library trustee nominated by the State Board for the Certification of Librarians; and ~~[The Trustees Round Table; and]~~

2. Designate one (1) of the appointees to serve as chair.

(c) The board of appeals shall notify the appellant and the state librarian, in writing, of the date and place of the hearing. Within twenty-one (21) calendar days after the hearing the appeals board shall notify the state librarian and the local board of its recommendation.

(d) The state librarian shall consider the recommendation of the appeals board and shall, within fourteen (14) calendar days of receipt, either adopt the recommendation without comment or adopt the recommendation with modifications. If the appeals board's decision is modified, the state librarian shall provide a written explanation of the rational for the modifications to the libraries impacted by the decision. ~~[render a final decision.]~~

(3) A party aggrieved by a final decision of the state librarian may file a formal appeal in accordance with KRS Chapter 13B.

Section 6. Award of Assistance. (1) The state librarian shall notify each eligible library of:

(a) The amount of assistance it will receive; and

(b) The requirements to be met in order to accept the award.

(2) ~~[.]~~ KDLA may make an award to a public library as long as the total of all awards of assistance do not exceed the amount of PLFC funding that is available. An award of assistance shall be subject to availability of funds appropriated for this purpose in each biennium.

(3) Within thirty (30) days of receipt of notice of the award, the public library board shall notify KDLA of acceptance or rejection of the award of assistance. A public library not responding within thirty (30) days shall be declared ineligible and the award of assistance withdrawn and redistributed to the eligible recipients. Upon written request within the original thirty (30) day period, the state librarian may grant a single thirty (30) day extension if extenuating circumstances exist. Extenuating circumstances include problems with:

(a) Finalizing the terms of financing;

(b) Obtaining title to the property;

(c) Obtaining surveys of the property; and

(d) Similar circumstances beyond the control of the local board.

Section 7. Procedures After Acceptance. (1) After a local board decides to accept an award of assistance, the local board shall:

(a) Establish a building committee, the meetings of which shall be attended by the regional librarian and the construction grant coordinator, if possible; and

(b) Complete the following:

1. An agreed-upon MOA between KDLA and the local board, signed by both;

2. The building committee membership list and schedule of meeting dates;

3. Holding company contract, if needed;
4. Construction plans approved by KDLA; and
5. Other documentation as specified by KDLA such as financial documents and engineering reports necessary to ensure compliance with this administrative regulation.[]

~~(2) Files for the project shall be kept at KDLA as directed in the appropriate public record retention schedule.[]~~

(2) ~~[(3)]~~ Funds for projects receiving assistance shall be distributed according to a payment and reporting schedule contained in the MOA between KDLA and the local board.

Section 8. Construction Procedures. (1) The local board shall retain an attorney to act as advisor on contracts and other legal matters during the term of the construction project.[]

~~(2) The project architect shall submit, to the U.S. Department of Labor, a list of construction trades that may be involved in order to establish the wage rate which the contractor shall be required to pay.[]~~

(2) ~~[(3)]~~ The architect shall proceed with the working drawings and specifications for submission to KDLA for final approval by KDLA before the project is advertised for bids.

(3) ~~[(4)]~~ After KDLA has approved the working drawings, the plans shall be completed and advertised publicly for construction bids. The advertisement shall include notice that a builder's risk policy shall be required as part of the construction contract.[]

~~(5) The bid opening date shall be coordinated with KDLA and the local library.~~

~~(6) The contract shall be awarded to the "lowest and best" responsible bidder, as mutually determined by the local board, the architect, and KDLA.[]~~

(4) ~~[(7)]~~ The architect shall notify the construction grant coordinator at least one (1) week before the building is ready for inspection and punch list. The completed building shall be inspected by KDLA's designated official. A KDLA representative may make site visits during the project term.[]

~~(8) A copy of each change order, invoice, and documentation of payment made shall be kept by the library in accordance with the Local Government General Records Retention Schedule established by KDLA and submitted to KDLA if requested.[]~~

(5) ~~[(9)]~~ KDLA may, upon request of the local board, assist in selecting and ordering the furniture and equipment for the project in accordance with state law governing state agency advertisement, bidding, and purchase from a state price contract. ~~[A prospective vendor shall furnish a bid and performance bond for each purchase over \$50,000.]~~

(6) ~~[(10)]~~ Each payment to a contractor or supplier shall be made promptly, upon approval by the architect. Retainage shall comply with KRS 371.410. ~~[Before substantial completion of the project, the board shall withhold ten (10) percent as retainage. After substantial completion of the project, the retainage may be reduced to five (5) percent if certified by the architect and approved by the board. If, after receipt of the punchlist, a reason for reduction of the retainage is certified, in writing, by the architect and approved by the board, the retainage may be reduced below five (5) percent. The minimum lump sum amount retained shall be twice the estimated cost to correct the punch list items.]~~

Section 9. Expenditure of Funds. (1) Funds from a PLFC grant shall be used only to pay a cost directly related to the construction or renovation of a local public library facility.

(2) A cost may include:

- (a) Site acquisition;
- (b) Architectural and engineering services;
- (c) Financial and legal services; and
- (d) Equipment.

(3) Site acquisition cost shall be limited to the lesser of:

- (a) The actual cost of acquiring a site; or
- (b) The fair market value of the site as determined by a qualified appraiser approved by KDLA.
- (4) Construction cost shall:
 - (a) Include fixed or movable equipment; and
 - (b) Not include consumable supplies.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Memorandum of Agreement", 7/21; ~~[40/06;]~~
 - (b) "Notification of Intent to Apply for State Fiscal Year ____ Public Library Facility Construction Funds", 7/21; ~~[6/06;]~~
 - (c) "Public Library Facility Construction Fund Application for Fiscal Year ____ Construction Grants", 7/21; ~~[8/06; and~~
 - (d) ~~"Local Government General Records Retention Schedule", 9/99.]~~
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Libraries and Archives, 300 Coffee Tree Road, ~~[Box 537;]~~ Frankfort, Kentucky 40601 ~~[40602-0537]~~, Monday through Friday, 9 a.m. to 4 p.m. ~~[8 a.m. to 4:30 p.m.]~~

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 14, 2021 at 3:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 1:00 p.m. Eastern Time, at the Kentucky Department for Libraries Hearing Room, 300 Coffee Tree Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Milburn, Deputy Commissioner, PO Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, phone 502-564-8325, email beth.milburn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Milburn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (725 KAR 2:015) establishes the application process, criteria for selecting projects for assistance, a minimum level of local participation, and the process to be followed in the construction of library facilities.

(b) The necessity of this administrative regulation: KRS 171.027 establishes The Public Library Facilities Construction Fund to assist local public libraries and other governing bodies in debt service payments relating to library construction or renovation projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the department to promulgate regulations relating to the application process; the criteria and method for selection projects for assistance; the level of local participation and the process to be followed in the construction or renovation of local public library facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a structure for the effective administration of state assistance under

the Public Library Facilities Construction Fund.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment defines a written building program. It requires a prescribed local match. This amendment outlines how the state librarian renders decision for an appeal. It also updates the name of the Division of Library Services.

(b) The necessity of the amendment to this administrative regulation: The amended regulations will help ensure equity and transparency in the grant process in so far as local participation and recipient selection, clearing ambiguities that exist in current regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the department to promulgate regulations relating to the application process; the criteria and method for selection projects for assistance; the level of local participation and the process to be followed in the construction or renovation of local public library facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide essential guidance for the grant selection committee and ensure that all applicants and proposed projects are treated fairly and equitably. Clarity gained in the regulation should also speed the grant review process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department for Libraries and Archives and the legally established public libraries in 119 counties.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any legally established public library seeking to assistance will need to file an "Intent to Apply" form by the deadlines prescribed; if those forms are accepted, they will be asked to submit an application for a grant on the forms prescribed and submit the application in the time frame established for this step. If they are awarded a grant, they will need to establish a specific account for the project and document all actions taken to complete the process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only costs will be determined by the project budget and that will vary for each project.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive financial assistance from the state which will be used to retire debt incurred to complete the project.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred by the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds appropriated by the legislature.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No required increase is projected.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase, directly or indirectly, any fees.

(9) TIERING: Is tiering applied? Recipient libraries will be required to make a minimum local

match as the sole burden of the annual debt retirement payments for these projects should not be put upon state government. The tiering system is based on the annual revenue from all sources that the public library receives. Libraries with annual revenue from all sources of less than \$100,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$1,000. Libraries with annual revenue from all sources of at least \$100,000 but less than \$500,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$10,000. Libraries with annual revenue from all sources of \$500,000 or greater shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$30,000.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department for Libraries and Archives and the legally established public libraries in 119 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.027

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The only impact will be in counties where the public library is engaged in a construction project. Each project varies in the amount of state funding they will receive. Recipient libraries will also be required to make a local match. Libraries with annual revenue from all sources of less than \$100,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$1,000. Libraries with annual revenue from all sources of at least \$100,000 but less than \$500,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$10,000. Libraries with annual revenue from all sources of \$500,000 or greater shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$30,000.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be minimal impact on the cost of administering this administrative regulation. This is an ongoing grant program which has been in place since 2000.

(d) How much will it cost to administer this program for subsequent years? There will be minimal impact on the cost of administering this administrative regulation. This is an ongoing grant program which has been in place since 2000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: